

# Exhibit 7

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3  
4 WAYNE BERRY, a Hawaii CIVIL NO. CV03-00385 SOM LEK  
citizen, (Copyright)

5 Plaintiff,

6 vs.

7 HAWAIIAN EXPRESS SERVICE,  
8 INC., a California corporation, VOLUME II  
et al.,

9 Defendants.

10  
11 VIDEOTAPED

12 DEPOSITION OF WAYNE BERRY

13  
14 Taken on behalf of Defendants,  
15 at the Law Offices of Kobayashi, Sugita & Goda,  
16 Suite 2600, 999 Bishop Street, Honolulu, Hawaii,  
17 commencing at 1:11 p.m.,  
18 on Thursday, May 19, 2005, pursuant to Notice.

19  
20 BEFORE: HEDY COLEMAN, CSR #116, RPR, CRR, CM  
21 Notary Public, State of Hawaii  
22 Certified Shorthand Reporter

23  
24 Ali'i Court Reporting  
25 2355 Ala Wai Boulevard, Suite 306  
Honolulu, Hawaii 96815

1 APPEARANCES:

2 For the Plaintiff:

3 TIMOTHY J. HOGAN, ESQ.  
4 Lynch, Ichida, Thompson & Kim  
5 1132 Bishop Street, Suite 1405  
6 Honolulu, Hawaii 96813

7 For the Defendant Post-Confirmation Trust:

8 LEX R. SMITH, ESQ.  
9 ANNE E. LOPEZ, ESQ.  
10 Kobayashi, Sugita & Goda  
11 First Hawaiian Center, Suite 2600  
12 999 Bishop Street  
13 Honolulu, Hawaii 96813

14 and

15 ERIC C. LIEBELER, ESQ.  
16 DAMIAN D. CAPOZZOLA, ESQ.  
17 Kirkland & Ellis  
18 777 South Figueroa Street  
19 Los Angeles, California 90017

20 For the Defendants Mark Dillon, Teresa Noa and Brian  
21 Christensen, et al:

22 LYLE HOSODA, ESQ.  
23 RAINA P.B. MEAD, ESQ.  
24 Lyle Hosoda & Associates  
25 345 Queen Street, Suite 804  
Honolulu, Hawaii 96813

26 For the Defendants Hawaiian Express Service, Inc.,  
27 H.E.S. Transportation Services, Inc., et al.:

28 ROY J. TJIOE, ESQ.  
29 Goodsill Anderson Quinn & Stifel  
30 Alii Place, Suite 1800  
31 1099 Alakea Street  
32 Honolulu, Hawaii 96813

1 For the Defendant Guidance Software, Inc. and Michael  
2 Gurzi:

3 REX Y. FUJICHAKU, ESQ.  
4 Bronster Crabtree & Hoshibata  
Suite 2300, Pauahi Tower  
5 1001 Bishop Street  
Honolulu, Hawaii 96813

6  
7 For Defendant Alix Partners, LLC:

8 GREGORY Y.P. TOM, ESQ.  
9 Watanabe Ing Kawashima & Komeiji  
999 Bishop Street  
10 23rd Floor  
Honolulu, Hawaii 96813

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12  
13 Also present: Wayne Berry

14 Martin Walker, Ph.D.

15  
16 Videographer: Robert Whitman

1 A At the moment, yes.

2 Q Are there any other facts based on your personal  
3 knowledge that underlie or give rise to your claim for  
4 direct infringement against Guidance and Michael Gurzi?

5 A Aside from what I've already mentioned, none that  
6 I can think of at the moment. There might be more, but I --  
7 none come to mind at the moment.

8 MR. FUJICHAKU: That's all I have. Thank you.

9 THE VIDEOGRAPHER: Off the record?

10 EXAMINATION.

11 BY MR. LIEBELER:

12 Q Mr. Berry, just following up on that testimony you  
13 gave, do you have any factual basis to assert that Mr.  
14 Walker and Mr. Gurzi have ever said so much as one single  
15 word with respect to -- to one another with respect to you  
16 or your case?

17 MR. HOGAN: Vague as to time.

18 MR. LIEBELER: At any time, sir.

19 A No.

20 BY MR. LIEBELER:

21 Q You're just making it up, aren't you?

22 MR. HOGAN: Objection; argumentative.

23 MR. LIEBELER: You may answer, sir.

24 A I think everything I said was true. We don't know  
25 conclusively what it all means. He was asking for things I

1 knew, that's all.

2 BY MR. LIEBELER:

3 Q What efforts, if any, have you made since the last  
4 time I took your deposition to market the 1993 FCS to  
5 anyone?

6 MR. HOGAN: Objection; vague as to time. The last time  
7 you took your deposition was two days ago.

8 MR. LIEBELER: July 1st of 2004. So, whenever it was  
9 the last -- the deposition in the bankruptcy case.  
10 Actually, it was yesterday, Mr. Hogan, just --

11 MR. HOGAN: Yeah.

12 MR. SMITH: You better correct it, because it was  
13 yesterday.

14 MR. LIEBELER: I did. But I took the point of the  
15 objection. I want to make sure the question is clear.

16 Q You remember I took your deposition last year --

17 A Yes.

18 Q -- in connection with the bankruptcy proceedings  
19 in Delaware? You recall that, Mr. Berry, right?

20 A Yes.

21 Q Since that deposition, when I think I asked you a  
22 similar question, what efforts have you made, if any, to  
23 market the 1993 FCS?

24 A Since then, I don't believe I've made efforts to  
25 market any software, including FCS 1993.

1 Q Okay. Have you attemptd to market the 2003 FCS  
2 since last year?

3 A I think I discussed it briefly, but I wouldn't  
4 consider it a marketing effort.

5 Q Who did you discuss it with?

6 A There was a local -- it was a local freight  
7 forwarder. It may have been before the deposition, I  
8 can't -- in fact it was before the deposition. It was -- it  
9 was in the summer of 2003. I apologize. It was before.

10 Q Just so the record is clear, is it fair to say,  
11 sir, that you've not tried to market the 1993 FCS in the  
12 last year at all?

13 A That's correct.

14 Q You have contended at various points in this case  
15 that one or more of the defendants hired Guidance Software  
16 for the purpose of tricking the bankruptcy court. Are you  
17 familiar with that contention, sir?

18 A Yes.

19 Q Articulate every basis in fact you have for that  
20 contention, please.

21 A My understanding is that Guidance went out to  
22 Kapolei in July of 2003 with the intent of removing all my  
23 intellectual property from the Fleming computers. After  
24 they did their work out there, Mr. Gurzi produced an  
25 affidavit to the bankruptcy court, basically claiming that

C E R T I F I C A T E

I, HEDY COLEMAN, CSR, in and for  
the State of Hawaii, do hereby certify:

That I was acting as shorthand  
reporter in the foregoing matter on the 19th day of  
May, 2005;

That the proceedings were taken  
down in machine shorthand by me and were thereafter  
reduced to typewriting by me; that the foregoing  
represents, to the best of my ability, a correct  
transcript of the proceedings had in the foregoing  
matter;

I further certify that I am not  
counsel for any of the parties hereto, nor in any  
way interested in the outcome of the cause named in  
the caption.

DATED: May 23, 2005

Hedy Coleman

HEDY COLEMAN, CSR #116  
Notary Public, State of Hawaii  
My commission expires: 9-14-05